

03-06-06

EV577694041US

AF\$  
JFW

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: William L. Grilliot *et al.* )  
Application: 10/695,404 ) Alissa L. Hoey  
Filing Date: October 28, 2003 ) Primary Examiner  
Docket No.: MOR3334P0891US ) Art Unit 3765

**APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

You are requested to grant a three-month extension of time to file this brief. A check for \$1520.00 is submitted, herewith, to cover the extension fee and the statutory fee for filing this brief. You are requested to charge any deficiency in either fee, or to credit any overpayment, to Deposit Account No. 23-0785.

*Real party in interest*

The real party in interest is Morning Pride Manufacturing, L.L.C. of Dayton, Ohio.

*Related appeals and interferences*

None.

*Status of claims*

Claims 1 through 4 have been finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Parket (US 3,269,036) in view of Hightower, Jr. (US Re.32,506).

03/07/2006 DEMMANU1 00000011 10695404

01 FC:1402 500.00 OP  
02 FC:1253 1020.00 OP

*Summary of claimed subject matter*

As claimed in claim 1, upon which the other claims depend, as described in the specification, in page 3, in lines 11 through 21, and as illustrated in Figure 1, the claimed subject matter is a pair of pants (10) having an upper portion (12), which when worn covers a lower region of a wearer's torso, and two leg portions (14), each of which when worn covers one of the wearer's legs.

Each leg portion (14) has an upper region (16), which extends downwardly from the upper portion (12), and a lower region (18), which extends upwardly from a lower end (20) of said leg portion (14) toward the upper region (16) and which terminates not higher than where said leg portion (14) when worn covers the wearer's knee.

The lower region (18) has a layer (22) of puncture-resistant material, which is made from a cloth fabric. The layer (22) extends upwardly from the lower end (20) of said leg portion (14) and surrounds the lower end (20) of said leg portion. The layer (22) is resistant to puncture by snakes or by thorny or spiky plants.

*Grounds of rejection to be reviewed on appeal*

One ground of rejection is to be reviewed on appeal, namely, the final rejection of claims 1 through 4 under 35 U.S.C. § 103(a) as being unpatentable over Parker (US 3,269,036) in view of Hightower, Jr. (US Re.32,506).

*Argument*

The primary examiner has written, repeatedly, and the undersigned attorney traverses, respectively, that "Parker teaches a pair of protective pants ...." Parker teaches and discloses leggings, not pants. As exemplified in Figure 2 of Parker, leggings are not pants but are worn over pants. For obvious reasons, leggings are not worn without pants.

Hightower, Jr., which also teaches and discloses leggings, and which evinces that leggings may be also called chaps, is mentioned by its number in the

Application No. 10/695,404

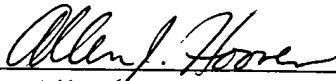
APPEAL BRIEF

Page 3

applicants' specification, under "Background of the Invention," where it is explained that this invention addresses a need for a pair of protective pants with enhanced, below-knee protection, whereby to eliminate a need for the wearer to wear separate chaps or separate leggings.

The undersigned attorney submits, respectfully, that any modification of the leggings of Parker in view of the teachings of Hightower, Jr., would result in separate chaps or separate leggings, not in a pair of protective pants, as claimed.

Respectfully submitted,

By   
Allen J. Hoover  
Reg. No. 24,103

March 2, 2006

*Claims appendix*

1. A pair of protective pants having an upper portion, which when worn covers a lower region of a wearer's torso, and two leg portions, each of which when worn covers one of the wearer's legs, wherein each leg portion has an upper region, which extends downwardly from the upper portion, and a lower region, which extends upwardly from a lower end of said leg portion toward the upper region and which terminates not higher than where said leg portion when worn covers the wearer's knee, wherein the lower region has a layer of puncture-resistant material, which is made from a cloth fabric, extends upwardly from the lower end of said leg portion, and surrounds the lower end of said leg portion and which is resistant to puncture by snakes or by thorny or spiky plants.

2. The pair of protective pants of claim 1 wherein the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material and wherein only the lower region of each leg portion has the layer of puncture-resistant material.

3. The pair of protective pants of claim 1 wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers.

4. The pair of protective pants of claim 1 wherein the upper portion and the upper regions of the leg portions have an outer layer of abrasion-resistant material, wherein the upper portion and the leg portions, from the upper portion to the lower ends of the leg portions, have one or more inner layers, and wherein only the lower region of each leg portion has the layer of puncture-resistant material.

[to next page]

*Evidence appendix*

The following evidence was submitted in a Request for Reconsideration, which was filed on July 5, 2005, and, presumably, was entered by the primary examiner:

According to the relevant definitions in *Webster's New Third International Dictionary*, Merriam-Webster Inc., Springfield, Massachusetts (1986): (1) pants means trousers, which extend downwardly from the wearer's waist; and (2) the human torso means the human trunk apart from the head and appendages, the legs being appendages.

[to next page]

Application No. 10/695,404

APPEAL BRIEF

Page 6

*Related proceedings appendix*

None.

[end]